

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER FITZGERALD,

Plaintiff,

v.

JAMES B. MARTIN, et al.,

Defendants.

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CIVIL ACTION NO. 16-3377

ORDER

AND NOW, this 3rd day of August, 2017, after considering the outstanding motions to dismiss the second amended complaint (the “motions”) (Doc. Nos. 35, 36); and the responses in opposition to the motions (Doc. Nos. 39, 41); and after hearing oral argument on the motions on May 26, 2017 (Doc. No. 46); and for the reasons set forth in the separately-filed memorandum opinion, it is hereby **ORDERED** as follows:

1. The motion to dismiss filed by the defendants, Lehigh County District Attorney, James B. Martin (“District Attorney Martin”), Assistant District Attorney Steven Luksa (“A.D.A. Luksa”), Detective Christopher Cruz (“Detective Cruz”) and Detective Todd Frey (“Detective Frey”) (Doc. No. 35) is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

a. The plaintiff’s official capacity claims against District Attorney Martin, A.D.A. Luksa, Detective Cruz, and Detective Frey are **DISMISSED WITH PREJUDICE**;

b. The plaintiff’s section 1983 malicious prosecution claim (count I) against District Attorney Martin and A.D.A. Luksa is **DISMISSED WITH PREJUDICE**. The plaintiff’s section 1983 malicious prosecution claim (count I) against Detective Cruz and Detective Frey is **DISMISSED WITHOUT PREJUDICE**;

c. The plaintiff's section 1983 false arrest and false imprisonment claims (count II) against District Attorney Martin are **DISMISSED WITHOUT PREJUDICE**. The motion is **DENIED** as to the plaintiff's section 1983 false arrest and false imprisonment claims (count II) against Detective Cruz and Detective Frey;

d. The plaintiff's section 1983 civil rights conspiracy claims (counts V and VI) against District Attorney Martin, A.D.A. Luksa, Detective Cruz, and Detective Frey are **DISMISSED WITHOUT PREJUDICE**; and

e. The motion is **DENIED** as to the plaintiff's Pennsylvania state law claims (counts VII-IX) against District Attorney Martin, A.D.A. Luksa, Detective Cruz, and Detective Frey;

2. The motion to dismiss filed by the defendant Lehigh County (Doc. No. 36) is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

a. The plaintiff's section 1983 malicious prosecution claim (count I) against Lehigh County is **DISMISSED WITHOUT PREJUDICE**;

b. The plaintiff's section 1983 false arrest and false imprisonment claims (count II) against Lehigh County are **DISMISSED WITHOUT PREJUDICE**;

c. The plaintiff's section 1983 failure to train and supervise claim (count IV) against Lehigh County is **DISMISSED WITHOUT PREJUDICE**;

d. The plaintiff's section 1983 civil rights conspiracy claims (counts V and VI) against Lehigh County are **DISMISSED WITHOUT PREJUDICE**; and

e. The motion is **DENIED** as to the plaintiff's Pennsylvania state law claims (counts VII-IX) against Lehigh County; and

3. The defendants are directed to file an answer within 14 days of the date of this order.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.